

REED SMITH LLP  
A limited liability partnership formed in the State of Delaware

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Attorneys for Defendants and Cross-  
Complainants Wells Fargo Bank, N.A.,  
individually and as Trustee of the Carrington  
Mortgage Loan Trust, Series 2006-NC4;  
Carrington Securities, L.P., and Stanwich Asset  
Acceptance Company, L.L.C.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

AUDREY MCNAMARA NEVIS,  
Plaintiff,

vs.

WELLS FARGO BANK; EXECUTIVE  
FINANCIAL LENDING, INC.; JOHN B.  
SPEAR; SHAI MOSHE; GATEWAY TITLE  
COMPANY; NC CAPITAL CORP.;  
CARRINGTON SECURITIES, LP;  
CARRINGTON MORTGAGE LOAN TRUST,  
SERIES 2006-NC4; STANWICH ASSET  
ACCEPTANCE COMPANY, L.L.C.; and DOES  
5-100, inclusive,

Defendants.

WELLS FARGO BANK, N.A.,

Cross-Complainant,

vs.

EXECUTIVE FINANCIAL LENDING, INC., a  
California Corporation; JOHN B. SPEAR, an  
individual; and SHAI MOSHE, also known as  
EDISON MOSHE, an individual,

Cross-Defendants.

No.: C-07-2568 MHP

**CROSS-COMPLAINT OF CARRINGTON  
SECURITIES, L.P. AND STANWICH  
ASSET ACCEPTANCE COMPANY, L.L.C.  
FOR INDEMNITY**

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1	JOHN B. SPEAR, an individual,
2	Counter-Claimant,
3	vs.
4	AUDREY MCNAMARA NEVIS, WELLS
5	FARGO BANK, EXECUTIVE FINANCIAL
6	LENDING, INC., SHAI MOSHE,
6	Counter-Defendants.
7	JOHN B. SPEAR, an individual
8	Third Party Plaintiff,
9	vs.
10	DOE NOTARY PUBLIC, MICHAEL MOSHE
11	EDISON, MARK HANNA, NATHAN SCHINE,
12	JAKLIN KHORSANDI, INTERNATIONAL
13	AIRLINES TRAVEL AGENT NETWORK,
14	TINA AGHI, and DOES 100 through 150,
15	inclusive,
16	Third Party Defendants.
17	CARRINGTON SECURITIES, L.P., and
18	STANWICH ASSET ACCEPTANCE
19	COMPANY, L.L.C.
20	Cross-Complainants,
21	vs.
22	EXECUTIVE FINANCIAL LENDING, INC., a
23	California Corporation; JOHN B. SPEAR, an
24	individual; and SHAI MOSHE, also known as
25	EDISON MOSHE, an individual, , L.L.C.
26	Cross-Defendants.

Defendants and Cross-Complainants Carrington Securities, L.P. and Stanwich Asset Acceptance Company, L.L.C. complain against cross-defendants and allege as follows:

### **THE PARTIES**

1. Cross-Complainant Carrington Securities, L.P. (“Carrington”) now is, and at all times mentioned in this cross-complaint was, a Delaware limited partnership.

2. Cross-Complainant Stanwich Asset Acceptance Company, L.L.C. ("Stanwich") now is, and at all times mentioned in this cross-complaint was, a Delaware limited liability company.

3. Carrington and Stanwich (collectively "Cross-Complainants") are informed and believe and on that basis allege that cross-defendant Executive Financial Lending Inc. ("Executive Financial") is a California Corporation, with its principal place of business in Sherman Oaks, California. Cross-Complainants are informed and believe and on that basis allege that Executive Financial is licensed by the California Department of Real Estate as a licensed mortgage broker corporation. Executive Financial served as the mortgage broker for the loan, entered into and secured by real property in Marin County, California, which is the subject of Plaintiff's Complaint in this matter.

4. Cross-Complainants are informed and believe and on that basis allege that cross-defendant John B. Spear ("Spear") is an individual licensed by the California Department of Real Estate as a broker, with his principal place of business in Temecula, California. Cross-Complainants are further informed and believe and on that basis allege that Spear is the designated officer for Executive Financial and is responsible for the supervision and control of Executive Financial's officers, employees, agents, and representatives.

5. Cross-Complainants are informed and believe and on that basis allege that cross-defendant Shai Moshe ("Moshe"), also known as Edison Moshe, is an individual. Cross-Complainants are further informed and believe and on that basis allege that Moshe is an officer, employee, agent, and/or authorized representative of Executive Financial. Cross-Complainants are further informed and believe and on that basis allege that Moshe was the Executive Financial representative Plaintiff dealt with in connection with the loan which is the subject of Plaintiff's Complaint in this matter.

**JURISDICTION**

6. This action is within the original jurisdiction of this Court based on diversity of citizenship and amount in controversy pursuant to 28 U.S.C. section 1332. This Court has subject matter jurisdiction over Cross-Complainants' cross-claims by virtue of the supplemental jurisdiction provided in 28 U.S.C. section 1367 because the cross-claims set out in this pleading form part of the same case or controversy as the original claims over which this Court has original jurisdiction.

**VENUE**

7. Venue is proper in the Northern District under 28 U.S.C. section 1391(a) because a substantial part of the events or omissions giving rise to the claims occurred in this judicial district and the property that is at issue in this action is situated in this judicial district.

**INTRADISTRICT ASSIGNMENT**

8. Pursuant to Local Rule 3-2(d), this case is properly assigned to the San Francisco Division because a substantial part of the events or omissions which give rise to the counterclaims arose out of events taking place in Marin County, California.

**FACTUAL BACKGROUND****Plaintiff's Loan Transaction**

9. On or about June 8, 2006, plaintiff in this action, Audrey McNamara Nevis ("Plaintiff" or "Nevis"), as borrower, entered into an Adjustable Rate Note, loan number 1008151947, with New Century Mortgage Corporation ("NCMC") as lender ("the Note"). Pursuant to the terms of the Note, Nevis borrowed a principal amount of \$880,000.00 from NCMC.

1           10. Pursuant to the terms of the Note, Nevis promised to pay principal and interest by making  
2 a payment each month, beginning on August 1, 2006. Pursuant to the terms of the Note, if Nevis  
3 failed to pay any monthly payment in full on the date due, she would be in default.

4  
5           11. On or about June 8, 2006, to secure payment of the principal sum and interest due and  
6 owing under the Note, and as part of the same transaction, for valuable consideration, Nevis made,  
7 executed and delivered to NCMC, as lender and beneficiary, a Deed of Trust, by the terms of which  
8 Nevis, as trustor, conveyed to third-party Financial Title, as trustee, the real property located at 16  
9 Creekside Drive, San Rafael, Marin County, California 94903 (“the Mortgage”) (The Mortgage and  
10 the Note are together hereinafter referred to as “the Nevis Loan.”).

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12           12. Executive Financial served as the mortgage broker for the Nevis Loan. On information  
13 and belief, Moshe was the Executive Financial representative for the Nevis Loan.

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15                           **The Mortgage Loan Purchase Agreement**

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17           13. Cross-Complainants are informed and believe and on that basis allege that NC Capital  
18 Corporation, (“NC Capital”) is a California Corporation and is a direct wholly owned subsidiary of  
19 NCMC. Cross-Complainants are further informed and believe that NC Capital and NCMC are  
20 debtors in the New Century Holdings, Inc. bankruptcy proceedings currently pending before the  
21 United States Bankruptcy Court for the District of Delaware.

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23           14. On or about September 1, 2006, Stanwich, as depositor; NCMC, as servicer, and Wells  
24 Fargo Bank, N.A. (“Wells Fargo”), as trustee, entered into a Pooling and Servicing Agreement  
25 (“Pooling and Servicing Agreement”).

15. On or about September 28, 2006, NC Capital; Carrington, as seller, and Stanwich, as purchaser, entered into a Mortgage Loan Purchase Agreement (“Mortgage Loan Purchase Agreement”).

16. Pursuant to the Pooling and Servicing Agreement and Mortgage Loan Purchase Agreement, the Nevis Loan, together with other mortgage loans, was sold to Stanwich and deposited into a mortgage pool comprising of a trust fund and evidenced by a single series of mortgage pass-through certificates designated as the Carrington Mortgage Loan Trust, Series 2006-NC4 Asset-Backed Pass-Through Certificates. Wells Fargo serves as Trustee for the Trust Fund and Certificateholders.

### **Plaintiff's Complaint**

17. Plaintiff failed to make payments as due under the Nevis Loan, and foreclosure proceedings were initiated. On or about May 15, 2007, Plaintiff filed her Verified Complaint, and on or about April 15, 2008, Plaintiff filed her Second Amended Complaint for Injunctive Relief, Rescission, Restitution, Damages, Punitive Damages, and Attorney's Fees (“Complaint”) in this action alleging causes of action against Cross-Complainants for violations of the Truth in Lending Act and Regulation Z, Real Estate Settlement Procedures Act, fraud and deceit, elder abuse under California Welfare and Institutions Code section 15600 *et seq.*, breach of fiduciary duty, breach of contract, recessionary damages and restitution, violations of California's unfair business practices act, Business and Professions Code section 17200 *et seq.* and negligence.

### **FIRST CAUSE OF ACTION (Declaratory Relief re Equitable Indemnity Against Cross-Defendants Executive Financial, Spear and Moshe)**

18. Cross-Complainants incorporate by reference paragraphs 1 through 17 inclusive, as though set forth at length herein.

1 19. Although Cross-Complainants deny the allegations contained within Plaintiff's  
2 Complaint herein, the damages alleged by Plaintiff, if any, would necessarily have resulted in whole  
3 or in part from the acts and/or omissions of Cross-Defendants Executive Financial, Spear and/or  
4 Moshe, including, without limitation, the acts and omissions of Executive Financial, Spear and/or  
5 Moshe as alleged in Plaintiff's Complaint. Accordingly, Cross-Complainants' liability for these  
6 damages, which Cross-Complainants deny, would arise not because of any fault on the part of Cross-  
7 Complainants, but because of the acts and/or omissions of Cross-Defendants Executive Financial,  
8 Spear and/or Moshe.

9  
10 20. By reason of the foregoing, Cross-Complainants are entitled to indemnity from Cross-  
11 Defendants Executive Financial, Spear and Moshe in an amount to be proven, including, without  
12 limitation, damages, if any, proven by Plaintiff, and costs and attorney's fees incurred and to be  
13 incurred by Cross-Complainants.

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15 21. An actual controversy has arisen and now exists between Cross-Complainants and  
16 Cross-Defendants Executive Financial, Spear and Moshe in that Cross-Complainants contend that,  
17 as between Cross-Complainants and Cross-Defendants Executive Financial, Spear and Moshe,  
18 responsibility, if any, for the damages, if any, claimed by Plaintiff herein rests entirely or partially on  
19 Cross-Defendants Executive Financial, Spear and Moshe, and, as a result, Cross-Defendants  
20 Executive Financial, Spear and Moshe are obligated to partially or fully indemnify Cross-  
21 Complainants.

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23 22. Cross-Complainants request that this Court make a determination of the extent of  
24 responsibility between Cross-Complainants and Cross-Defendants Executive Financial, Spear and  
25 Moshe for damages claimed by Plaintiff in her Complaint, if any, and further that Cross-Defendants  
26 Executive Financial, Spear and Moshe be ordered to reimburse Cross-Complainants on the basis of  
27 each's proportionate share of the responsibility for the damages awarded to Plaintiff, if any.  
28

23. Such a declaration is necessary and appropriate at this time. The claims of Plaintiff and the claims of Cross-Complainants arise out of the same transaction, and determination of both in one proceeding is appropriate in order to avoid a multiplicity of actions.

WHEREFORE, Cross-Complainants pray for judgment against Cross-Defendants as set forth herein.

**PRAYER FOR RELIEF**

WHEREFORE, Defendants and Cross-Complainants Carrington Securities, L.P. and Stanwich Asset Acceptance Company, L.L.C. pray for relief as follows:

1. That Plaintiff Audrey McNamara Nevis take nothing by way of her Complaint on file herein;

2. For judgment that Cross-Complainants are entitled to indemnity from Cross-Defendants for any amounts awarded to Plaintiff against Cross-Complainants on the Complaint;

3. For a determination by this Court of the extent of responsibility between Cross-Complainants and Cross-Defendants for any damages awarded to Plaintiff, and further for an order that Cross-Defendants be required to reimburse Cross-Complainants on the basis of their proportionate share(s) of the responsibility for the injuries and damages awarded to Plaintiff, if any;

4. For Cross-Complainants' reasonable attorneys' fees in an amount to be determined by the Court;

5. For Cross-Complainants' costs of suit incurred herein; and

6. For such other relief as the Court may deem just and proper.

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DATED: August 4, 2008

REED SMITH LLP

By /s/ Heather B. Hoesterey  
David C. Powell  
Heather B. Hoesterey  
Attorneys for Defendants and Cross-Complainants  
Wells Fargo Bank, N.A., individually and as  
Trustee of the Carrington Mortgage Loan Trust,  
Series 2006-NC4; Carrington Securities, L.P., and  
Stanwich Asset Acceptance Company, L.L.C.

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